

Report on Improving Agency Disclosure of Information

Prepared Pursuant to Executive Order 13392

Federal Energy Regulatory Commission

June 13, 2006

A. Characterize overall nature of agency's FOIA operations (degree of detail optional), with optional reference to areas preliminarily considered for agency review. (Agencies may also describe any particular FOIA challenges that they face.)

The Federal Energy Regulatory Commission (Commission) works diligently to process the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2004), requests it receives from the general public. The Commission has been successful in preventing a backlog of FOIA cases. For fiscal year 2004, the Commission received 192 FOIA requests, all of which were responded to in a timely manner. However, five requests were voluminous¹ and were completed on a rolling basis in fiscal year 2005. In fiscal year 2005, the Commission received 118 FOIA requests, which were also responded to in a timely manner. Nine of these requests were voluminous or involved matters relating to two pending proceedings and were not completed in fiscal year 2005. As of May 2006, one of these nine requests has been completed. Eight are still pending: two of the requests are suspended at the request of the requester and one of the requests is voluminous and is being responded to on a rolling basis. The remaining five requests relate to issues concerning an Annual Report of Major Electric utilities (Form No.1's), which the Commission is addressing in ongoing proceedings in Docket Nos. AC05-58-000 and AC05-59-000. Hence, staff must await the Commission's decision in these proceedings before they are able to make a determination with respect to the five Form No. 1 requests.

The Commission's FOIA operation is managed by the Office of External Affairs (OEA), in which the Chief FOIA Officer and FOIA Public Liaison are located. The agency's staff involved in FOIA compliance consist of the following: (1) administrative and program management staff in OEA, who take delivery of all FOIA requests and handle matters relating to appropriate FOIA administration and program implementation; (2) legal staff in the Office of the General Counsel (OGC), who carryout legal activities associated with administering the FOIA, such as reviewing requested documents and

¹ A "voluminous" request seeks records that are complex and/or pertain to a large quantity of documents that require a significant search and/or review.

making determinations with respect to the disclosure of the requested information, applying FOIA exemptions, and processing FOIA Appeals; and (3) technical staff designated from various program offices “non-FOIA personnel”², generally, personnel who perform document searches for records that are responsive to FOIA requests and those who must coordinate with FOIA personnel to make a determination of the sensitivity of any record and its appropriateness for release.

The review conducted by the Commission staff in response to Executive Order 13392 revealed that, although this agency has almost no backlog of FOIA requests and has an excellent track record for addressing those requests within the statutory deadlines, there are nevertheless some improvements that can be made by the Commission. The improvements that have been identified are discussed in detail in this report.

All of the identified improvements will be completed or initiated by the end of October 2006. However, to provide continuous improvement of the FOIA process at FERC, the Chief FOIA Officer has organized the Commission personnel most heavily involved in the FOIA process into a “FOIA Team.” This Team will meet every two months (bi-monthly) beginning on June 20, 2006. At each meeting, the FOIA Public Liaison will provide metrics for the proceeding two months, including the number of FOIA requests, whether any responses are beyond the deadline or threatening to go beyond the deadline, and whether submissions to the agency are being properly labeled as “public.” The Team will also review whether the number of non-FOIA personnel who are responsible for searches and identification of exempt information is adequate to maintain timely responses. The FOIA Team will continue to evaluate the efficient use of Commission staff and on-going training requirements in order to meet the goals of the Executive Order and the anticipated increase in voluminous Liquefied Natural Gas (LNG) and transmission project filings.

B. List all areas selected for review

1. Affirmative disclosure under subsection (a) (2).
2. Overall FOIA Web site improvement.
3. Automated tracking capabilities.
4. Acknowledgment letters.
5. Process by which necessary cooperation is obtained from agency program personnel.

² The term “non-FOIA personnel” is used in the same context as defined in FOIA Update, Vol. XVI, No. 3, at 1. The term refers to any Commission program office staff whose cooperation is often essential to the completion of the FOIA’s administrative process and whose lack of timely assistance could cause significant delays in complying with FOIA requests”.

6. Additional training needed (formal and/or on-the-job).
7. Recycling of improvement information gleaned from FOIA Requester Service Center.
8. Improvement for processing outstanding requests identified in the review.

C. Include narrative statement summarizing results of review

In compliance with Executive Order 13392, the Chief FOIA Officer in consultation with the FOIA Public Liaison and other relevant staff, including legal staff in OGC, undertook a review of the agency's current FOIA operations. As a result of the review, it was established that improvements can be made in the agency's FOIA operations with regard to the following areas, as explained below. In addition, the review created an awareness of the value of periodic meetings of a FOIA Team, comprised of the FOIA personnel in OEA and OGC General Administrative Law Section, and the key non-FOIA personnel in each of the Commission's applicable program offices, including those non-FOIA personnel responsible for completing FOIA searches. It was decided that the FOIA Team would meet bi-monthly.

1. Affirmative disclosure under subsection (a) (2)

The Commission has an established policy for posting on its "eLibrary" website all documents filed and all final documents or orders, including press releases and the commissioners' formal statements, issued with respect to all proceedings before the Commission or other actions taken by the Commission, including staff studies and reports. Documents that are not exempt under FOIA are routinely posted in "eLibrary" as "public" or made available through the public reference room. Pursuant to Commission policy, letters from constituents sent to the Commission by Members of Congress that relate to contested proceedings before the Commission are redacted to remove personal identifying information before being placed in the dockets as "public." Constituents letters not related to docketed proceedings are posted in the eLibrary as "non-public." Areas of improvements are suggested in the Commission's plan, (see page 6 et seq.).

As a result of the review, FOIA staff concluded that the Commission should continue its policy of posting FOIA released materials as "public" in the eLibrary and on the Commission's website. In addition, the review indicated the need to establish a process to ensure that all FOIA released material is properly posted in the eLibrary as "public."

2. Overall FOIA Web site improvement

The review revealed that the Commission should continue its practice of periodically updating its FOIA website. The FOIA website will be updated: (1) to include information detailing the agency's FOIA Requester Service Center; (2) to remove and/or update existing information; and (3) to rearrange items on the website to enhance the overall clarity of the web pages, thereby making them easier to navigate and more user-friendly.

3. Automated tracking capabilities

Staff needs to complete the design of the FOIA database system, make it accessible to all FOIA operations staff, and to ultimately integrate the database into the Commission-wide Activity Tracking Management System (ATMS). This system, which is targeted to become fully operational in June 2007, will be invaluable to the FOIA staff in general and particularly to the FOIA Service Center.

4. Acknowledgment letters

In addition to responding to requester's inquiries concerning their pending requests, staff needs to ensure that all requesters are provided with written communications acknowledging receipt of their FOIA requests.

5. Process by which necessary cooperation is obtained from agency program personnel

Continuous emphasis on cooperation between the agency's FOIA administration staff and non-FOIA personnel will continue to result in timely, accurate and thorough office searches for records responsive to FOIA requests.

6. Additional training (formal and/or on-the-job)

To increase the capabilities of the agency non-FOIA personnel and to ensure quality searches, thereby maintaining efficient processing times for FOIA requests, newly assigned non-FOIA personnel will continue to be scheduled to receive FOIA training. In addition, existing FOIA staff will continue to be scheduled for appropriate supplemental training to stay current on substantive, procedural and administrative matters relating to the FOIA.

7. Recycling of improvement information gleaned from FOIA Requester Service Center

The Commission will establish a systematic process for recognizing and adopting, where appropriate, feedback from customers through the Service Center or to the Public Liaison.

8. Improvement for processing outstanding requests identified in the review

The agency's FOIA administration staff will make every effort to diligently work with the program offices to ensure that office searches are completed timely and that responses are written and sent to requesters within the 20-working day time frame.

D. List all areas chosen as improvement areas for agency plan

To ensure more citizen-centered and results-oriented FOIA operations, staff seeks improvement in the areas of:

1. Affirmative disclosure under subsection (a) (2).
2. Overall FOIA Web site improvement.
3. Automated tracking capabilities.
4. Acknowledgment letters.
5. Process by which necessary cooperation is obtained from agency program personnel.
6. Additional training needed (formal and/or on-the-job).
7. Recycling of improvement information gleaned from FOIA Requester Service Center.
8. Improvement for processing outstanding requests identified in the review.

E. For each improvement area provide:

1. Name: Affirmative disclosure under subsection (a)(2).

Brief statement of goal(s)/objective(s) (i.e., improvement(s) sought to be made)

The goal is to ensure that documents that should be made publicly available are, in fact, properly filed with the Commission as public documents.

List of all distinct steps planned to be taken

- (1) Provide guidance to the public and assist those submitting information to the Commission on what should be filed as public information.
- (2) Where practicable, non-FOIA personnel will review submissions to determine whether the information is properly labeled and filed.

Time milestones (in relation to specific timetables and outcomes)

This goal will be accomplished by June 30, 2006. However, review of the policy will be ongoing, as set forth below:

- (1) At the Commission FOIA Team's June 20, 2006 meeting, staff will review and establish internal procedures designed to systematically assess the accuracy of self-designation of submittals by applicants, and the proper posting of those submittals.
- (2) At the Commission FOIA Team's June 20, 2006 meeting, staff will evaluate the availability of sufficient non-FOIA personnel, including alternates. Such evaluation will continue, as necessary, at future bi-monthly FOIA Team meetings.

Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days)

A measure of success of the first goal will be a running assessment by the Chief FOIA Officer as to whether the procedures have:

- (1) Succeeded in reducing FOIA requests related to project documents.

(2) Resulted in fewer self-designations being reversed by Commission staff.

(3) Ensure that no documents being filed as “non-public” should be filed as “public.”

2. Name: Overall FOIA Web Site improvement

Brief statement of goal(s)/objective(s) (i.e., improvement(s) sought to be made)

The Commission's goal is to ensure the Commission's FOIA website is user-friendly and provides requesters with the most accurate up-to-date information related to FOIA.

List of all distinct steps planned to be taken

- (1) Rearrange existing links and add additional links on the website to enhance the overall clarity of the website and to improve overall navigability.
- (2) Rearrange the website to ensure that the frequently used links are easily located.
- (3) Promptly remove or update all information currently on the website.
- (4) Update FOIA website to include information regarding the FOIA Public Liaison, Public Service Center, and Chief FOIA Officer.

Time milestones (in relation to specific timetables and outcomes)

This goal will be accomplished by July 30, 2006, as set forth below. However, updates to the website will be ongoing as needed:

- (1) Website revised by 6/30/06.
- (2) Update website to include information concerning the FOIA Public Liaison, Service Center, and Chief FOIA Officer was completed on 5/18/06.

Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days)

The success of this goal can be measured by the frequency of calls to the Service Center concerning requester's inability to locate information on the Commission's FOIA website.

3. Name: Automated tracking capabilities

Brief statement of goal(s)/objective(s) (i.e., improvement(s) sought to be made)

The Commission's goal is to use suitable information technology (IT) to enable the FOIA Service Center staff to readily provide requesters with information about the status of their requests as well as appropriate information concerning the agency's response.

List of all distinct steps planned to be taken

- (1) Continue working with assigned IT staff in the development of an efficient system designed specifically to meet the tracking needs of the FOIA administration staff as well as the Service Center staff.
- (2) Seek input in the design of the system from all appropriate FOIA staff concerning the capabilities of the system and its usability.
- (3) Provide training for appropriate FOIA staff to ensure effective use of the system.
- (4) Assign appropriate "rights" to the system to FOIA staff.
- (5) Request modifications to the system as warranted to increase its effectiveness in providing information to better serve citizens.

Time milestones (in relation to specific timetables and outcomes)

This goal will be accomplished by June 2007. However, after June 2007, adjustments will be ongoing as warranted, as set forth below:

- (1) Three phases for accomplishment of this goal: stage 1 - initial development design lasting through 6/30/06; stage 2 – modifications permissible until 4/2007 – nearing proposed time for integration with agency wide IT ; and stage 3 – integration into agency-wide ATMS technology slated for 6/2007.
- (2) Staff input currently through 6/23/2006.
- (3) Training completed by 7/30/06.

(4) Completion of assignment “rights” 6/30/06.

(5) Modification to the system will be ongoing.

Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days)

The success of the IT will be measured through informal consultations with FOIA personnel and discussed during the bi-monthly FOIA Team meetings. The FOIA staff will gauge the efficiency of the system in tracking information necessary to provide requesters with the status of their FOIA requests and/or the response.

4. Name: Acknowledgment Letters

Brief statement of goal(s)/objective(s) (i.e., improvement(s) sought to be made)

The goal is to continue to provide the requesters, through a more structured process, information regarding the status and processing of all FOIA requests.

List of all distinct steps planned to be taken

- (1) Update templates of form acknowledgment letters for prompt acknowledgment of receipt of requests to requesters.
- (2) Set a deadline for sending an acknowledgement letter to a requester within two business days from the date of receipt of a FOIA request.
- (3) Assign primary and alternate FOIA staff to be responsible for the acknowledgment communications.
- (4) Send an acknowledgement letter via fax or regular mail only if the requester did not provide an e-mail address.
- (5) Review the effectiveness of the acknowledgement letter process at each bi-monthly FOIA Team meeting.

Time milestones (in relation to specific timetables and outcomes)

This goal will be accomplished by June 30, 2006, as set forth below:

- (1) Templates and procedures agreed to by 6/20/06.
- (2) Deadline confirmed for sending acknowledgments by 6/20/06.
- (3) Staff assignments will be made to meet the staffing requirements by 6/20/06.
- (4) Full implementation of new procedures for sending acknowledgements (via email, fax or regular) will be made by 6/20/06.
- (5) Review of the effectiveness of the acknowledgment letter process will be made at the 8/06 meeting and continue at each bi-monthly meeting thereafter.

Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days)

The success of this goal can be measured by comparing the number of requests received against the number of acknowledgement letters sent, minus the number of requests withdrawn before acknowledgement could be sent (within 2 business days of receipt of a request).

5. Name: Process by which necessary cooperation is obtained from agency “program personnel”

Brief statement of goal(s)/objective(s) (i.e., improvement(s) sought to be made)

The goal is to have the appropriate program offices continue to emphasize the importance of completing accurate, thorough and timely searches for documents that are responsive to FOIA requests and, when necessary, to have an appropriate subject matter expert in the program office provide essential advice to the FOIA staff concerning the technical and/or sensitive nature of the particular information and its appropriateness for release.

List of all distinct steps planned to be taken

(1) The Commission Chairman will direct appropriate program office managers to appoint sufficient non-FOIA personnel, including alternates and technical subject-matter experts, and to emphasize the importance of continuing to provide essential and timely FOIA assistance to the FOIA administration and legal staff.

(2) Provide a review and/or guidance to appropriate non-FOIA personnel on the proper completion of the FOIA search memorandum to prevent unnecessary delays in processing.

(3) Under the directions of OGC General and Administration Law Section, training will be provided to non-FOIA personnel and other pertinent staff, including appropriate program office managers, on the requirements of FOIA, with an emphasis on timely processing of the requested information.

(4) Clarify the FOIA search memorandum to make it clear that non-FOIA personnel must provide recommendations to FOIA staff regarding the sensitivity of records and their appropriateness for disclosure.

Time milestones (in relation to specific timetables and outcomes)

This goal will be accomplished by October 2006, as set forth below. However, reassessments of the goal will be ongoing at the bi-monthly FOIA Team meetings.

(1) Meeting to be conducted on 6/20/2006, to evaluate the need to assign additional non-FOIA personnel and subject matter experts in appropriate program offices.

(2) Chairman to direct appropriate program office directors to assign additional non-FOIA personnel, as needed, by 7/31/06.

(3) Improvements to FOIA search memorandum discussed and agreed to at 6/20/2006 meeting.

(4) Training classes for non-FOIA personnel to be scheduled by 7/31/06.

Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days)

In most instances, office searches for responsive documents are essential for the legal staff to respond within the statutory time frame to FOIA requests. Hence, measurement of this objective will be expressed as the number of days required by the search staff to complete their task for each request. This information will be added to the FOIA Search Memorandum. These data will be discussed at each bi-monthly FOIA Team meeting and adjustments and admonishments made as necessary. The data will be considered in the context of the number of requests identified as pending after expiration of statutory time period (20-working days) for a response.

6. Name: Additional training needed

Brief statement of goal(s)/objective(s) (i.e., improvement(s) sought to be made)

The goal is for FOIA staff to stay current on substantive, procedural and administrative matters concerning the FOIA, and also to periodically provide a forum for the exchange of ideas and information useful in dealing with problems that commonly arise in administering the FOIA.

List of all distinct steps planned to be taken

- (1) Identify training opportunities for FOIA staff to increase efficiency and customer service.
- (2) Seek approval for courses as determined to be needed.
- 3) Staff attends training course(s).

Time milestones (in relation to specific timetables and outcomes)

This goal will be accomplished by February 5, 2007, as set forth below. However, training will be ongoing as necessary.

- (1) Initial training needs identified by 9/29/06 – with periodic reassessments by the FOIA Team.
- (2) Time and location for initial course(s), if needed, established by 10/13/06.
- (3) Approval for initial training by 10/31/06.
- (4) Actual training commenced no later than 2/2/07 – ongoing as warranted.

Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days)

Success in meeting this goal will be measured by completion of all the steps listed above.

7. Name: Recycling of improvement information gleaned from FOIA Requester Service Center

Brief statement of goal(s)/objective(s) (i.e., improvement(s) sought to be made)

The Commission will establish a systematic process for recognizing and adopting, where appropriate, feedback from customers through the Service Center or the Public Liaison.

List of all distinct steps planned to be taken

- (1) Public Liaison will prepare for each bi-monthly meeting of the Commission FOIA Team a report of all feedback items received since the last meeting of the team.
- (2) Public Liaison will provide a briefing on the status of implementing the feedback items adopted at the previous meeting. The briefing will also include all suggestions made by Commission staff during the preceding period.

Time milestones (in relation to specific timetables and outcomes)

This goal will be accomplished initially by June 28, 2006.

- (1) The first Public Liaison report on feedback items will be due at the first formal bi-monthly FOIA Team meeting, June 20, 2006 and will continue at future bi-monthly meetings.
- (2) The first Public Liaison briefing on the status of implementing the feedback items will be due at the June 20, 2006 FOIA Team meeting and will continue at bi-monthly meetings.

Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days)

The Public Liaison will keep a record of the number of feedback items the Service Center or the Public Liaison received, as well as any other feedback received from Commission staff, and include the numbers and the most significant items in the annual FOIA report.

8. Name: Improvement for processing outstanding requests identified in the review

Brief statement of goal(s)/objective(s) (i.e., improvement(s) sought to be made)

In order to ensure the promptest possible response to requesters, we will make every effort to diligently work with the program offices to ensure that office searches are completed timely and that responses are written and sent to requesters within the 20-working day time frame. Specifically, regarding the eight outstanding FOIA requests mentioned in paragraph A, five of the requests were completed and closed on September 7, 2006. We plan to complete the remaining three requests as discussed below.

List of all distinct steps planned to be taken

- (1) Two requests which are pending at the request of the requester will be closed out by December 29, 2006, by sending the requester final responses and bills. The requester will be informed that he can file a new request(s) for additional information if he sees the need to do so in the future.
- (2) The one remaining request will be closed out by October 31, 2006. A final written response informing the requester there are no additional responsive documents will be finalized and mailed to the requester.

Time milestones (in relation to specific timetables and outcomes)

This goal will be accomplished by December 29, 2006.

- (1) As discussed above, five of the requests were completed and closed on September 7, 2006.
- (2) Two requests which are pending at the request of the requester will be closed out by December 29, 2006, by sending the requester final responses and bills.
- (3) The one additional request will be closed out by October 2, 2006. A final written response informing the requester there are no additional responsive documents will be finalized and mailed to the requester.

Means of measurement of success (e.g., quantitative assessment of backlog reduction expressed in numbers of pending requests, percentages, or working days)

The success of this goal will be measured by whether the three outstanding requests are completed and closed by the milestones dates as set forth above.

F. For the entire plan, group the improvement areas into the following time periods:

1. Areas anticipated to be completed by December 31, 2006

- (1) Affirmative disclosure under subsection (a)(2) (ongoing).
- (2) Overall FOIA Web Site improvement.
- (3) Automated tracking capabilities.
- (4) Acknowledgment letters.
- (5) Process by which necessary cooperation is obtained from agency “program personnel” (ongoing).
- (6) Additional training needed (ongoing).
- (7) Recycling of improvement information gleaned from FOIA Requester Service Center. (ongoing).
8. Improvement for processing outstanding requests identified in the review.

2. Areas anticipated to be completed by December 31, 2007

- (1) Continues.
- (2) Continues.
- (3) Ongoing.
- (4) Ongoing.
- (5) Ongoing.
- (6) Ongoing as warranted.
- (7) Continues.

3. Areas anticipated to be completed after December 31, 2007

- (1) Continues.
- (2) Continues.
- (3) Ongoing
- (4) Ongoing.
- (5) Ongoing.
- (6) Ongoing as warranted.
- (7) Continues.